IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI

BEFORE: SHRI C.N. PRASAD, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER

ITA No.6319/Mum/2019
(**Assessment Year :2009-10**)
&
ITA No.6318/Mum/2019
(**Assessment Year :2011-12**)

DCIT-CC-8(1) Room No.656, 6th Floor Aayakar Bhavan M.K.Road, Mumbai Maharashtra-400 020	Vs.	M/s.Nirshilp Securities Pvt. Ltd., 301-308, 3rd Floor, Bhagwati House-A-19 Veera Desai Road Andheri (W) Mumbai – 400 058 Maharashtra
PAN/GIR No.AABCN4361M		
(Appellant)	..	**(Respondent)**

ITA No.6317/Mum/2019
(**Assessment Year :2009-10**)

DCIT-CC-8(1) Room No.656, 6th Floor Aayakar Bhavan M.K.Road, Mumbai Maharashtra-400 020	Vs.	M/s.Dolat Investment Ltd., 301-308, 3rd Floor, Bhagwati House-A-19 Veera Desai Road Andheri (W) Mumbai – 400 058 Maharashtra
PAN/GIR No.AABCN4361M		
(Appellant)	..	**(Respondent)**

Revenue by	Shri Tharian Oommen
Assessee by	Shri Rajiv Khandelwal
Date of Hearing	**17/05/2021**
Date of Pronouncement	**21/06 /2021**

आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

ITA No.6317/Mum/2019 (A.Y.2009-10) M/s. Dolat Investment Ltd.,

This appeal in ITA No. 6317/Mum/2019 for A.Y.2009-10 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal No. CIT(A)-50/10019/2016-17 dated 16/07/2019 (ld. CIT(A) in short) against the order of assessment passed u/s. 143(3) rws 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2012 by the ld. Income Tax Officer-9(3)(3), Mumbai (hereinafter referred to as ld. AO).

Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

2. With the consent of both the parties, the appeal of the revenue for the Asst Year 2009-10 in ITA No. 6317/Mum/2019 in the case of Dolat Investments Ltd is taken as the lead case and the decision rendered thereon would apply with equal force for other assessee also and for other assessment year also, in view of identical facts, except with variance in figures.

3. The first issue to be decided in this appeal is as to whether the ld CITA was justified in deleting the addition made on account of Client Code Modification (CCM) facility in NSE in the facts and circumstances of the

instant case, which had resulted in alleged shifting of profit from one entity to another entity.

3.1. We have heard the rival submissions and perused the materials available on record. We find that the assessee is engaged in the business of trading in shares, futures & options (F&O) and commodity. The return of income for the Asst Year 2009-10 was filed by the assessee company on 26.9.2009 declaring total income of Rs 17,90,19,414/-. The assessment was completed u/s 143(3) of the Act on 16.12.2011 determining total income at Rs 18,00,03,129/-. Subsequently a notice u/s 148 of the Act dated 31.3.2016 on the basis of information received from Principal Director of Income Tax (Intelligence and Criminal Investigation), Ahmedabad vide their letter dated 8.3.2016 that fictitious profit and losses were created by some brokers by misusing the Client Code modification facility in F&O segment on NSE during March 2010. The brokers were alleged to be indulging in transferring the fictitious losses to different clients to reduce their tax liability and also fictitious profit to other clients. As per the reasons recorded for re-opening of assessment, the ld AO had reason to believe that assessee's income chargeable to tax including bogus loss amounting to Rs.4,33,28,629/- along with various expenses thereon such as brokerage & commission etc. pertaining to same, have escaped assessment and it is a fit case for issue of notice u/s. 148 of the Act, by reason of the failure on the part of the assessee to disclose the factsfully and truly in its return of income.

3.2. The Ld AO said in his order as below:

> *"5 In this case, the assessee is a beneficiary and has obtained entry of loss of (-)Rs.4,33,28,628/- by dubiously shifting out net profits of Rs.4,74,75,013/-*

and shifted out net loss of Rs.41,46,385/- by misusing the Client Code Modification (CCM) facility. During the course of assessment proceedings, the assessee was asked to provide complete details of client code modification and the assessee was also provided with the complete transaction level data of client code modification."

"5.14 ……. But in the present case, it is squarely established that NO RISK AT ALL was borne by the persons who ***selectively shifted*** *in only* ***ascertained losses****. Thus these losses are contrived losses shifted in* ***for the purpose of evading taxes*** *due which is otherwise due on other income / gain already incurred." (emphasis supplied)*

3.3. With these observations, the ld AO proceeded to make an addition of Rs 4,33,28,628/- (47475013-4146385) on account of CCM by stating that the assessee had shifted its profits to another entity. We find that the ld CITA had appreciated the various contentions of the assessee and deleted the addition, aggrieved by which, the revenue is in appeal before us.

4. We find that the ld DR vehemently argued that the assessee had resorted to this CCM in order to shift the loss from one entity to another entity having profits , within its group, in connivance with the broker. Hence any act done in connivance with the broker by making CCM containing genuine errors etc is totally irrelevant and accordingly the ld CITA ought not to have taken cognizance of the same. The ld DR argued that CCM was carried out at the end of the Broker and hence no commission was charged in lieu of benefits derived for these transactions. He also argued that the broker had confirmed before the ld AO that they had never been penalised by SEBI or NSE for CCM transactions, as the same was done within the group. He argued that this cannot be a reason

for giving relief to the assessee as the CCMs were done within the group, there was no need to even report the same to SEBI or NSE by the broker and accordingly, there is no question of broker getting penalised. There is no third party involved in these transactions to even lodge a compliant against the broker which would have enabled SEBI or NSE to penalise the broker. Meagre percentage of CCM transactions as compared to the total volume of trade carried out by the broker is totally irrelevant as any wrong done, whether minor or major, need to be punished, more so , when the same was done in order to derive overall tax advantage within the group. He argued that the ld AO had given the tabulation stating the CCM transactions for the Asst Year 2010-11 in his order, whereas the year under consideration is Asst Year 2009-10. The ld DR stated that ld CITA is having co-terminus powers with that of the ld AO and hence he could have called for the details pertaining to Asst Year 2009-10 from the assessee and made verification on his own or called for a remand report from the ld AO in that regard, before proceeding to delete the addition. With regard to the observation of the ld CITA that the other parties have offered to tax within the group company , the same is totally irrelevant as there was overall tax advantage derived within the group. The ld DR finally prayed for setting aside of this entire issue to the file of ld AO for denovo adjudication in accordance with law.

5. On hearing the ld DR which were rebutted by the ld AR and on reading the elaborate order of the ld CITA and on understanding the modus operandi of the Client Code Modification (CCM) transactions carried out by the broker in the peculiar facts of the instant case, we find that the CCM facility is only available to broker. Brokers use this facility for correcting the errors of punching and entering client code. We find that there are two parts in data provided by the ld AO to the assessee seeking for

explanation, wherein Part I have data where the assessee is Original Client , whose profit, according to ld AO , to the tune of Rs 4,74,75,013/- has been shifted out to other entity. The other one contained net loss of Rs 41,46,385/-, which was also shifted to other entity. Accordingly, we find that the ld AO had proceeded to make an addition for the net figure of Rs 4,33,28,628/- in the assessment. The entire details of the said working for arriving at the net profit figure of Rs 4,33,28,628/- including the details of trades that had happened from the months of May to December are already on record and the same are not reproduced herein for the sake of brevity.

5.1. The party wise summary of the transactions in the aforesaid table are as under:-

Alleged Profit/Loss shifted out/In							
Counter party	**PAN**	**Alleged shifted out Net Profit / (Loss)**	**Alleged shifted in Net Profit/ (Loss)**	**Net Effect**	**Returned Income**	**Mat Liability Payable**	**Benefit of Income Shifting (presumed)**
Amishi H. Shah	ALSPS4479E	4,42,923		4,42,923	28,37,300		0
HarshaH. Shah	ABHPS6795E	93,61,420		93,61,420	2,47,17,474		0
Jigar P. Shah	AALPS8617G	1,59,90,160		1,59,90,160	3,00,65,648		0
Jigar Comm P Ltd	AAACJ1728P	84,948		84,948	33,45,773		0
NirshMpSec. P Ltd.	AABCN4361M	-16010231	41,46,385	-2,01,56,616	1,62,81,814		38,74,802
Nirupama P Shah	ABCPS9838F	90,79,863		90,79,863	2,56,08,870		0
Purvag Comm P Ltd	AAACS5626H	14,62,285		14,62,285	-	2,16,565	14,62,285
Purvag S. Shah	AALPS8654H	38,37,733		38,37,733	90,37,560		0
RajulS. Shah	ABHPS6794F	70,42,000		70,42,000	2,16,44,801		0
Shilpa R. Shah	AAQPS0181A	54,39,863		54,39,863	2,85,24,744		0
VaibhavP . Shah	AALPS8652B	96,65,390		96,65,390	2,45,85,628		0
Vaipan Sec P Ltd	AABCV2295C	10,78,663		10,78,663	-		10,78,663
Total		4,74,75,014	41,46,385	4,33,28,629			64,15,750

5.2. From the aforesaid table, it could be safely concluded that all the CCM transactions have been carried out by the broker within the same shah family or within same entities belonging to the group. Hence there is no third party who is involved or affected because of these CCM transactions. We find that the ld AR drew our attention to the Circular No. 653 issued by National Stock Exchange (NSE) vide Ref. No. NSE/INVG/2011/18484 dated 29.7.2011 wherein reference to SEBI circular is also made. The gist of this circular is reproduced in pages 12 & 13 in para 5.12 of the assessment order , which is also reproduced hereunder for the sake of convenience :-

> *"The Exchange has provided the facility of client code modification only to rectify genuine errors. Further, as per point 2(a) and 3(B) of the SEBI circular dated July 5, 2011, the following client code modifications would be considered as genuine modifications, provided there is no consistent pattern in such modifications:*
>
> *i. Where original client code / name and modified client code/ name are similar to each other but such modifications are not repetitive.*
>
> *ii. Where original client code and modified client code belong to a family.*
>
> *(Family for this purpose means spouse, dependent parents, dependent children and HUF)"*

5.2.1. Thereafter, vide Circular No. NSE/INVG/2011/670 dated 26.08.2011, NSE has again clarified that :

> *"In the joint meeting held between SEBI and Exchanges, it was decided that the following clarifications be issued for client code modifications:*
> *The following would constitute genuine errors with regard to client code modifications:*
> *- Error due to communication and / or punching or typing such that the original client code / name and the modified client code / name are similar to each other.*
> *- Modification within relatives ('Relative' for this purpose would mean "Relative" as defined under the Companies Act, 1956)".*

5.2.2. Hence, it could be safely concluded that genuine errors in CCM transactions within the same families or within the same related concerns are permitted by NSE vide abovementioned circular and the same are to

be construed as genuine errors, not requiring any penal action from the side of NSE and SEBI on any party. We find that table reproduced supra and the aforesaid circulars are read together, we find that the dates of trades had happened during the months of May to December and assessee could not have pre-empted what would be the overall profits at the end of March and hence there cannot be any allegation that could be levelled on the assessee that it had indulged in shifting of profits to another entity. We further find that all CCM transactions are done on the same day of trading transactions thereby proving its genuinity that assessee was not trying to take undue advantage of market fluctuations in prices. Hence the observation made by the ld AO in page 13 of his order in para 5.13 is devoid of merits. In any case, the CCM transactions are carried out only within the same group. With regard to the argument advanced by the ld DR that the CCM transactions are carried out within the group and no third party is involved and hence there is no question of any third party lodging a complaint against the broker for the said malafide transactions, is concerned, we find that SEBI had issued a circular dated 31.5.2004, which was placed on record, prescribing penalty and the same is relevant only for Cash Segment transactions. SEBI vide its Circular dated 5.7.2011 prescribed levy of penalty on Futures & Options (F&O) Segment which also includes CCM transactions on F&O Segment. Hence in any case, even if there are any ingenuine errors and even if third parties are involved in CCM transactions, no penalty could have been levied by SEBI for the year under consideration as the applicability of penal provisions are effective only from 5.7.2011 onwards. Hence the argument advanced by the ld DR in this regard is dismissed.

5.3. From the second table reproduced supra containing the summary of transactions containing the shifting of profit / loss within the same family

and same group on account of genuine CCM transactions, we find that all are tax paying entities liable to be taxed at the maximum marginal rate and the returned income of all the parties are much more than the net effect of CCM transactions. This fact has been taken cognizance by the ld CITA while granting the relief, on which, we find no infirmity. No contrary fact was also placed on record by the ld DR before us. Infact, the ld DR had stated that loss of one entity is shifted to another entity having profits. This is factually incorrect as all the entities are profit making entities and liable to be taxed at maximum marginal rate. Hence there is no question of evasion of tax even within the group. There is absolutely no loss to the exchequer due to these genuine CCM transactions carried out due to genuine errors committed by the broker. Hence the argument advanced by the ld DR in this regard deserve to be dismissed.

5.3.1. Having made the above observation, we find that only two entities viz. Purvag Comm P Ltd (Rs 14,62,285/-) and Vaipan Sec P Ltd (Rs 10,78,663/-) were involved in adverse situation which had effectively resulted in some loss to the exchequer due to CCM transactions carried out within the group due to genuine errors. These two transactions totaling to Rs 25.40 lacs is very very meagre when compared to the total trade transactions carried out by the assessee. What is to be seen is that whether the CCM transactions had occurred due to genuine errors. We had already seen that all the CCM transactions had been carried out by the broker (and not by the assessee) within the same family and same concerns of the group and errors committed thereon fall within the ambit of genuine errors as contemplated in NSE circular dated 29.7.2011 and 26.8.2011. Hence for genuine errors committed by the broker, no addition could be made in the hands of the assessee in these peculiar facts and circumstances of the instant case.

5.4. We find that the allegation has been made by the ld DR that assessee had connived with the brokers. We find that this is merely a bald statement made merely out of suspicion as the assessee had not made any changes nor has made any suggestion to broker for effecting the changes. We have already seen hereinabove that CCM is a facility permissible by SEBI and NSE. If misuse is to be alleged by the revenue, then it has to have evidence to support it. We find that no cogent evidence or even cash trail has been brought on record by the revenue before us to prove that CCM facility in the instant case has been misused. When modification of client code is made on same day within permissible time limit prescribed by the regulatory body, then it cannot be treated as misuse in absence of compelling evidence. Reliance in this regard has been rightly placed by the ld AR on the decision of *Ahmedabad Tribunal in the case of Amar Mukesh Shah reported in 81 taxmann.com 450 (Ahmedabad Trib),* wherein it was held that when the client code was modified on the same day, there cannot be any malafide intention.

5.5.From the aforesaid table reproduced, it could be seen that when volume of trades executed by brokers is compared with CCM transactions, it comes to meagre 0.51% for buy quantity and 0.32% for sell quantity. We find that this fact was brought to the notice of the ld AO vide letter dated 19.12.2016 which fact is also acknowledged by the ld AO in para 5.2. of his assessment order, wherein these facts are stated before the ld AO as under:-

> *"6. We are enclosing herewith the statement showing the allege turnover of assessee shifted in along with total turnover of the broker – Nirpan Securities Private Limited and percentage of data modified with respect to total turnover of broker and marked as Annexure-1. We can clearly see that percentage of alleged client code modification with respect to total transaction of broker on the same date is very low & negligible e.g. on*

> *29-04-2008 percentage of buy quantity with respect to total trades of Broker of the assessee is just .51% and for sell qty it is just .32%. The volume of the business of the broker of the assessee is huge and error and omission can happen as the transactions are executed by human being i.e. Employees and Traders."*

5.5.1. In this regard, reliance was rightly placed by the ld AR on the Co-ordinate Bench decision of *Ahmedabad Tribunal in the case of M/s Kunwarji Finance Pvt ltd and Group cases reported in 61 taxmann.com 52 (Ahmedabad Tribunal),* wherein similar issue was involved of CCM but in Commodity Exchange transactions, wherein the tribunal decided in favour of the assessee in the light of the fact that changes were made during the permissible time and accounting of modified transaction made by concerned parties in their respective accounts and returns. We find that the Ahmedabad Tribunal also took note of the fact that volume of changes which was found that CCM trades were around 0.94% of total trades executed by broker of assessee which is very meagre.

5.6. We also find that the ld AR also placed reliance on the Co-ordinate Bench decision of this Tribunal in the case of *PAT Commodity Pvt Ltd in ITA Nos. 3498 & 3499/Mum/2012 dated 7.8.2015* wherein it was held that trade modification as per rules and regulations of exchange and for identifiable client (KYC compliant) cannot be taxed in the hands of assessee once it is taxed in the hands of other party (client).

5.7. We find that the reliance was also placed by the ld AR on the decision of Co-ordinate Bench decision of this Tribunal in the case of *Sambhavnath Investment in ITA No. 3109/Mum/2011 dated 31.12.2013*, wherein it was held that in absence of material evidence on record to defy these transactions by denial from Exchange authorities & there being evidence on record that broker has denied to have been entered into the

transactions on behalf of assessee the addition cannot be made that Client Code Modification was exploited for bogus loss or profit.

5.8. We find that the ld AO in para 5.14. reproduced above had alleged that CCM facility was misused for the purpose of evading taxes due.We find that this was rebutted by the ld AR by drawing our attention to the Annexure 2 Part I and II of the assessment order, wherein it could be seen (i) Firstly, where original client code is that of the assessee and that out of 57 instances (rows) considered for allegedly shifting out of profit/loss, there are 17 rows which shows losses and balance 40 rows shows profit. They are all on different dates. The Net Profit alleged to be shifted out was Rs.4,74,75,013.80. Similarly, in Part II of Annexure -2, where Modified Client Code is that of the assessee, there are 23 instances (rows) of which there are 14 instances where profit shifted in and 9 instances (rows) where losses shifted in. They are also on different dates. The Net Profit so alleged to be shifted in was Rs.41,46,385.00. This fact contradicts the observation and assumption of the Ld. AO stated above that CCM trades were (1) selectively shifted and (2) only when ascertained losses. Secondly, all client code shown as modified client code in Part I or shown as original code in Part II are ALL group company/relatives of the assessee. These group concerns / individuals are also paying taxes as stated hereinabove. Hence there is no benefit achieved by transferring profit/loss to/from group company/individual to the assessee. We are inclined to accept to this factual reasoning given by the ld AR at the time of hearing by making specific reference to the table reproduced hereinabove and accordingly hold that the allegation levelled on the assessee is based on incorrect observation and hence cannot be accepted.

5.9. We find that the ld AO in para 5.4 of his order had observed the modus operandi with example to demonstrate how the CCM facility was misused. We find that this was duly defended by the assessee before the ld CITA by stating that *in nutshell, as per this example there shall be profit in one entity (Table-5 : Account of M/s. XYZ) and counter loss in other entity (Table-6: Account of M/s. PQR). There is NO RISK involved. The CCM trades were treated as bogus and fictitious in view of the modus operandi explained by the ld AO in his order. Relying upon this modus operandi while concluding at Para 5.15, he mentioned that the profits of Rs.4,33,28,628/- shifted out in case of the assessee are treated* ***fictitious and non-genuine****. When this example is compared with the CCM trades as also all other trades, it is noticed that the Ld. AO had wrongly relied upon this example and thereby came to a wrong conclusion. As per the example cited, if there is profit shifted out by Your Appellant then necessarily there will be corresponding loss in books of Your Appellant on the same day from the same scrip viz. NIFTY – Futures. But, this has not happened. Your Appellant verified trading transactions on selected 5 days where profit alleged to be shifted out is highest and on 1 day when loss shifted out is highest and found that there is no arising of loss or profit when alleged profit is shifted out or losses shifted in respectively. The details of all trades are available with the Ld. AO and he could have also verified the same before applying model modus operandi which is heavily relied upon by him. The Brokers Notes requisitioned by the Ld. AO vide his notice u/s.142(1) dated 05/12/2016 were provided to him by Your Appellant in CD submitted along with AR's letter dated 19-12-2016. The Ld. AO therefore grossly erred in making assumption that bogus, fictitious and non-genuine loss is claimed by Your Appellant.*

5.10. We find that the ld AO in Para 5.14 of his order stated as under:-

> *"... But in the present case, it is squarely established that NO RISK AT ALL was borne by the persons who selectively shifted in only ascertained losses. Thus these losses are contrived losses shifted in for the purpose of evading taxes due which is otherwise due on the other income / gain already incurred. Thus, there is no element of price risk. This shows the losses / profits were not incurred on account of any genuine risk taking in market but were in a way bought after they were ascertained and are hence contrived."*

5.10.1. We are unable to persuade ourselves to accept to the aforesaid observation of the ld AO in as much as the ld AO had not shown how has he established that NO RISK AT ALL was borne by the persons. To establish this, he should have observed pair of transactions where profit or loss emerged corresponding to pair of transactions where loss or profit respectively is shifted in or out. But he failed to point out even a single set of such opposite transactions in support of his contention. The profit or loss as calculated on the basis of intraday trading are genuine transactions where profit or loss is actually earned/incurred. There are no opposite transactions as perceived by the ld AO. The observation of the ld AO is baseless without verifying the transactions provided to him in CD along with the covering letter before him.

5.11. We find that the ld DR argued that the ld AO had given the tabulation stating the CCM transactions for the Asst Year 2010-11 in his order, whereas the year under consideration is Asst Year 2009-10. The ld DR stated that ld CITA is having co-terminus powers with that of the ld AO and hence he could have called for the details pertaining to Asst Year 2009-10 from the assessee and made verification on his own or called for a remand report from the ld AO in that regard, before proceeding to delete the addition. We find that ld CITA had not merely deleted the addition for this reason alone. He had dealt with all the other relevant

aspects in his order in detail. Hence the argument made by DR in this regard is dismissed.

5.12. We find that ld CITA had even listed out some of the most popular non-genuine CCM transactions constituted as per the NSE which are tabulated as under:-

> *a) Percentage of modified traded value is significantly higher than the total traded value of any trading members / clients.*
> *b) Number of modified trades is significant to total number of trades of any trading members / clients.*
> *c) Profit / loss arising on account of all modifications by trading member / client is significant in comparison to the profit / loss in the trades, where no modifications have been carried out.*
> *d) Profit / loss arising due to modification is significant.*
> *e) Trades have been modified to unrelated parties.*
> *f) Both buy and sell leg of different trades have been modified to same client.*
> *g) The same sets of client are observed to be making profit / loss due to the modifications carried out.*
> *h) Total number of trade modifications increased before closing of the financial year.*

5.12.1. We find that the ld CITA had categorically stated that none of the above characteristics of the non-genuine CCM are reflected from the meagre and truncated CCM data placed on record by the ld AO in the assessment order and that on the other hand, the data reproduced in the assessment order clearly shows that the modified trades had been executed amongst the group concerns only, which is permitted as genuine errors. This finding given by the ld CITA has not been controverted by the revenue before us.

5.13. We also find that the ld CITA had even looked into the aspect whether there was CCM for unusually high number of cases. For this purpose, he had looked into the circular issued by The Commodity Exchange i.e MCX vide Circular No. MCX/T&S/032/2007 dated 22.1.2007 wherein the guidelines had been issued with regard to CCM prescribing

certain penalties based on the number of modifications carried out. The said circular has been reproduced by the ld CITA in pages 60 to 62 of his order and the same is not reproduced herein for the sake of brevity. Based on the said circular, the ld CITA had concluded that even the MCX stock exchange is very much aware about CCM and hence in order to discourage frequency of modifications, it had brought in penalty mechanism. Even under the penalty mechanism also, no penalty shall be leviable, if the modification was less than 1% of the total transactions meaning thereby, the MCX is also accepting the fact that such kind of CCM is inevitable.

5.14. We further find that the ld CITA had in paras 12.49 to 12.50 of his order had held as under:-

> *12.49 I have also taken note of the fact that in any given day, thousands of transactions are carried out by brokers. The CCM facility is provided by the National Stock Exchange to rectify the errors / mistakes made at the time of Punching trades. The National Stock Exchange of India Limited has provided certain guidelines and penalties relating to the CCM Facility. As per the stock exchange, CCM facility can be used to modify the client code on the trade day itself till 4:15 PM. This is also stated in Circular No. 974 dated 10.09.2009 of the National Securities Clearing Corporation Limited for its Futures & Options Segment. The stock exchange has also drawn a list of the common violations committed and the applicable penalties, where it is stated as under:*
>
> > "*if the transfer of trades/ errors at the time of order entries are in excess of 2% of the number of orders executed, fine of 0.1% of value of trades transferred is applicable."*
>
> *12.50. It is a matter of regular business practice that a broker in a stock exchange makes modifications in the client code on sale and / or purchase of any securities, after the trading is over, so as to rectify any error which might have occurred, while punching the orders. In the present case at hand, there is nothing on record to show that the modifications done in the client code was not on account of a genuine error, originally occurred at the time of punching the trade. Though, there is a client code modification*

done by the assessee's broker but there is no link from there to conclude that it was done deliberately to evade due taxes.

5.15. We find that the ld CITA had placed reliance on the decision of *Hon'ble Jurisdictional High Court in the case of Coronation Agro Industries Ltd vs DCIT reported in 82 taxmann.com 75 (Bom)* wherein it was held as under:-

4. *We note that the reasons in support of the impugned notice accept the fact that as a matter of regular business practice, a broker in the stock exchange makes modifications in the client code on sale and / or purchase of any securities, after the trading is over so as to rectify any error which may have occurred while punching the orders. The reasons do not indicate the basis for the Assessing Officer to come to reasonable belief that there has been any escapement of income on the ground that the modifications done in the client code was not on account of a genuine error, originally occurred while punching the trade. The material available is that there is a client code modification done by the Assessee's broker but there is no link from there to conclude that it was done to escape assessment of a part of its income. Prima facie, this appears to be a case of reason to suspect and not reason to believe that income chargeable to tax has escaped assessment.*

5.16. Similarly, we find that the ldAR also placed reliance on the decision of *Hon'ble Jurisidictional High Court in the case of PCIT vs Pat Commodity Services Pvt ltd in ITA No. 1257 of 2016 & 1383 of 2016 dated 15.1.2019,* wherein it was held as under:-

"3. The respondent assessee is a private limited company engaged in the business of providing commodity services to its clients. In the return of income filed by the assessee for the Assessment Year 2006-07, the Assessing Officer noticed that there were instances of client code modifications. The Assessing Officer believed that the same was done to indulge in circular trading to pass on profits or losses to the clients of the assessee company as per requirements. After hearing the assessee, the Assessing Officer made additions in the income of the assessee on such basis. The issue eventually reached to the Tribunal. The Tribunal did accept the Revenue's theory of misuse of clients code modification facility. However, the Tribunal accepted the assessee's explanation and discarded the Revenue's theory that profit of the assessee's company were passed on to the clients. It was also noticed that the Revenue has not contended that the client code modification facility is often misused by the assessee to pass on losses to the investors, who may have sizable profit arising out of commodity trading against which such

losses can be set off. The Revenue normally points out number of such instances of client code modifications as well as nature of errors in filling of the client code. At any rate, what can be taxed in the hands of the present assessee is the income escaping assessment. Even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. In the present case, the Assessing Officer has added the entire amount of doubtful transactions by way of assessee's additional income, which is wholly impermissible. We do not know the fate of the individual investors in whose cases, the Revenue could have questioned the artificial losses. Be that as it may, we do not think entertaining these appeals would serve any useful purpose.
4. In the result, both the appeals are dismissed."

5.17. Lastly, we find that the ld DR at last prayed for setting aside of this appeal to the file of ld AO for denovo adjudication. We are not inclined to accept to this request of the ld DR in as much as all the facts are fully available on record and no fresh facts or evidences had emanated at this stage warranting giving an opportunity to the assessee. Moreover, the same facts that were given before the ld AO was placed by the assessee before the ld CITA. It is only a question of appreciation of very same evidences and facts on record. Hence setting aside of this issue to the file of ld AO to re-examine the very same evidences would only tantamount to giving second innings to the ld AO. Hence the request made by the ld DR in this regard is hereby dismissed.

5.18. The ld AR further placed reliance on the following decisions wherein under similar facts and circumstances, this tribunal had decided the issue in favour of the assessee :-

(a) Remi Sales and Engineering Ltd – ITA No 3650/Mum/2018 (Mum Trib)

(b) Remi Securities Ltd – ITA No 3649/Mum/2018 (Mum Trib)

(c) Aditya Commodities Pvt Ltd – ITA No 1971/Mum/2018 (Mum Trib)

5.19. In view of our elaborate observations and respectfully following the various judicial precedents relied upon hereinabove for various propositions detailed hereinabove including that of the Hon'ble Jurisdictional High Court, we hold that the ld CITA had rightly deleted the addition made on account of CCM in the peculiar facts and circumstances of the instant case. Accordingly, the grounds raised by the revenue in ITA No. 6317/Mum/2019 for the Asst Year 2009-10 are dismissed.

6. In the result, the appeal of the revenue in the case of Dolat Investments Ltd in ITA No. 6317/Mum/2019 for the Asst Year 2009-10 is dismissed.

Nirshilp Securities Pvt Ltd – ITA No. 6319/Mum/2019 – Asst Year 2009-10 – Revenue Appeal

7. This appeal in ITA No.6319/Mum/2019 for A.Y.2009-10 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal No.CIT(A)-50/10020/2019-20 dated 16/07/2019 (ld. CIT(A) in short) against the order of assessment passed u/s. 143(3) rws 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2016 by the ld. Asst. Commissioner of Income Tax-10(3)(1) Mumbai (hereinafter referred to as ld. AO).

8. The decision rendered hereinabove in the case of Dolat Investments Ltd in ITA No. 6317/Mum/2019 for the Asst Year 2009-10 shall apply with equal force for this assessee and for this assessment year also, in

view of identical facts, except with variance in figures, as agreed by both the parties before us.

9. In the result, the appeal of the revenue in the case of Nirshilp securities Pvt Ltd in ITA No. 6319/Mum/2019 for the Asst Year 2009-10 is dismissed.

Nirshilp Securities Pvt Ltd – ITA No. 6320/Mum/2019 – Asst Year 2011-12 – Revenue Appeal

10. This appeal in ITA No. 6320/Mum/2019 for A.Y. 2011-12 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal No. CIT(A)-50/10022/2018-19 dated 10/07/2019 (ld. CIT(A) in short) against the order of assessment passed u/s. 143(3) rws 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2016 by the ld. Asst. Commissioner of Income Tax-10(3)(1), Mumbai (hereinafter referred to as ld. AO).

11. The decision rendered hereinabove in the case of the assessee for the Asst Year 2009-10 in ITA No. 6319/Mum/2019 for the Asst Year 2009-10 shall apply with equal force for this assessment year also, in view of identical facts, except with variance in figures, as agreed by both the parties before us.

12. In the result, the appeal of the revenue in the case of Nirshilp securities Pvt Ltd in ITA No. 6320/Mum/2019 for the Asst Year 2011-12 is dismissed.

13. TO SUM UP:-

Sr. No.	ITA No.	AY	Assessee	Result
1.	6319/Mum/2019	2009-10	Nirshilp Securities Pvt. Ltd.,	Revenue Appeal Dismissed
2.	6318/Mum/2019	2011-12	Nirshilp Securities Pvt. Ltd.,	Revenue Appeal Dismissed
3.	6317/Mum/2019	2009-10	Dolat Investment Ltd.,	Revenue Appeal Dismissed

Order pronounced on 21/06/2021 by way of proper mentioning in the notice board.

(C.N. PRASAD) **(M.BALAGANESH)**
JUDICIAL MEMBER **ACCOUNTANT MEMBER**

Mumbai; Dated 21/06/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :
1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			